

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RORY M. WALSH, individually	:	CIVIL NO. 1:07-CV-0616
and as Natural Guardian of	:	
C.R.W. and S.J.W.,	:	(Judge Conner)
	:	
Plaintiff	:	
	:	
v.	:	
	:	
DR. ROBERT KRANTZ, et al.,	:	
	:	
Defendants	:	

MEMORANDUM

Upon the November 12, 2008 referral by Judge Conner (Doc. 100) of the discovery matters presented by the plaintiff, by Order of November 18, 2008 we directed the completion of the plaintiff's deposition and directed further explanation by the plaintiff of the inadequacies found by the plaintiff in the defendants' response to discovery demands of the plaintiff. On November 20, 2008, the plaintiff duly complied. In part, by then, the defendants had provided further responses. In part, the plaintiff cited the absence of responses to certain discovery demands. (Doc. 104).

By Order of November 20, 2008 (Doc. 105) the defendants were directed to respond to the plaintiff's statement of inadequacies. A response was filed on December 2, 2008. (Doc. 108). The plaintiff, at the request of the court, filed a reply on December 7, 2008. (Doc. 111).

The pending claims in this case are those stated in the amended complaint. (Doc. 52). The factual allegations and legal claims stated in the amended complaint are set forth comprehensively in the court's Memorandum and Order of August 22, 2008 (Doc. 72) and will not be repeated herein. The Order of August 22, 2008 establishes that this civil action is proceeding on these claims:

- a. Plaintiff's individual claims and claims on behalf of C.R.W. pursuant to the Federal Wiretapping Act (Count I) against defendants Dr. Robert Krantz, an unknown Dallastown staff member, and the Dallastown Area School District.
- b. Plaintiff's individual claims pursuant to the Pennsylvania Wiretap Act (Count III) against defendants Dr. Robert Krantz and the unknown Dallastown staff member.
- c. Plaintiff's individual claims and claims on behalf of C.R.W. under the Fourth Amendment pursuant to 42U.S.C. § 1983 (Count IV) against defendants Dr. Robert Krantz and the unknown Dallastown staff member.

Krantz, an unknown Dallastown staff member, and the Dallastown Area School District.

The Order of August 22, 2008 established a discovery deadline of September 16, 2008. By Order of August 26, 2008, the deadline was continued to December 16, 2008. On November 16, 2008, discovery issues were referred to me for resolution. After obtaining the position of the parties, those issues are addressed herein.

Our determination of these discovery issues will be guided by the Federal Rules of Civil Procedure. Under Rule 26(b) (1) of the Federal Rules of Civil Procedure,

[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense-- including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b) (2) (C).

Rule 34 of the Federal Rules of Civil Procedure provides for discovery by way of requests for the production of documents. Rule 34(b)(1)(A) provides that a request "must describe with reasonable particularity each item or category of items to be inspected." The nine requests to defendant Krantz are as follows:

1. That Federal Warrant authorizing you to eavesdrop on any of Plaintiff Walsh's telephone conversations with his son CRW.
2. The roster of administrative assistants on duty and at work on 29 March 06 when you illegally eavesdropped on the telephone conversation between Plaintiff Walsh and CRW. That roster is to clearly annotate those two individuals who answered the telephone during both of Walsh's calls to your school, the first you took in place of CRW, the second you eavesdropped on.
3. A copy of the construction blueprint of the principal's office and administrative offices of the Dallastown Middle School, showing the location of telephone jacks.
4. A purchase order and full description of all telephones at use in your office at the Dallastown Middle School, and as used by each of the administrative persons in the outer administrative offices, detailing make, manufacture, number of phone lines, and conference call capability as were present and used on 29 Mar 06.

5. A full copy of any witness statement you provided to the York Regional Police Detectives that were sent out to the Dallastown Middle School when Plaintiff Walsh attempted to have you arrested for illegally eavesdropping on one of his conversations between Plaintiff Walsh and CRW.

6. Full copies of all emails between yourself and defendants Cathcart and Weinberg regarding your illegal eavesdropping, that precipitated your being fired as the principal at the Dallastown Middle School.

7. Full copies of those educational orders and documents censoring you for your criminal activity by eavesdropping on the conversation between Plaintiff Walsh and CRW, that documented your being removed as principal at the Dallastown Middle School.

8. Full copies of those educational orders and documents suspending you from your duties at the Dallastown Middle School as a direct result of your having eavesdropped on a telephone conversation between Plaintiff Walsh and CRW.

9. Full copies of your farewell email message, or transcript of your final speech to your staff at the Dallastown Middle School prior to your being suspended or fired from your billet as the school principal for illegally eavesdropping on the conversation between Plaintiff Walsh and CRW.

The plaintiff's first request for the production of documents to defendant Krantz and the first request to the

defendant School District each contain substantially the same nine requests. The defendants have answered numbers 1, 5, 6, 7, 8 and 9, stating as to each that there are no responsive documents. That is not an inadequate response. A party who asserts that an opposing party has failed to make discovery on the grounds that the opposing party has asserted that it has no documents within the range of the definition of the requested documents, when the requesting party has no basis to present to the court for the assertion that the opposing party's statement is false, can not obtain an order compelling discovery. It is not provided for in the discovery rules for the court to conduct a fact finding proceeding to determine the truthfulness of discovery responses. Counsel and the parties are well aware of the potentially severe civil and criminal penalties for generating false statements or documents in judicial proceedings.

The plaintiff's framing of his requests for the production of documents in compound format is counterproductive. He should use carefully worded requests for admissions, interrogatories or deposition questions to the

extent that he seeks admissions and carefully worded requests for the production of documents when he is seeking the production of documents.

The plaintiff, who is *pro se*, is intelligent and is an able communicator. He is not reasonably seen to be unaware of the concept of disputed issues of fact. He is not reasonably seen to be unaware that it is in dispute whether there was an illegal eavesdropping by any defendant of a conversation between him and his son. The defendants' Answer (Doc. 62) to the plaintiff's Amended Complaint makes it quite clear that the plaintiff's allegation of illegal eavesdropping is in dispute. Given that it is obviously in dispute whether there was illegal eavesdropping by any defendant, the plaintiff's incorporation into the articulation of his requests for the production of documents of the fact of an illegal eavesdrop as one of the essential elements or as one of the characteristics of the categories of the documents being sought was not done in a reasonable effort to obtain potentially relevant information. Descriptions of documents being sought not containing the assumed fact of an illegal eavesdrop could have been framed.

The plaintiff chose a course of discovery that was not reasonable in light of the disputed issues of fact. The defendants' responses were not inadequate given that the allegation of an illegal eavesdropping is in dispute, as is the allegation that there was a disciplinary action taken against defendant Krantz by the School District.

The plaintiff asks for the court to extend special consideration to him as a *pro se* plaintiff, and not to hold him to have knowledge of legal technicalities. That request is sensible, and the plaintiff's *pro se* status is taken into account.

This matter involving the plaintiff's statement of requests for the production of documents in a manner where the responding party's production might be seen to constitute an admission of a disputed material issue is not a matter where any sound reason appears to warrant special treatment for the plaintiff. The plaintiff asserts in his reply that his discovery efforts should not be thwarted by legal technicalities. The defendants' explanation for their

responses plainly related why they determined that they did not have documents of the nature described by the plaintiff, i.e., documents relating to the defendant's illegal wiretapping activities. The plaintiff in his reply does not address this ostensibly valid reason.

We also do not find that defendants' responses to the second, third and fourth requests for the production of documents to be inadequate.

The plaintiff's first requests for the production of documents were sent to the defendants on July 3, 2008. On July 19, 2008, the plaintiff sent each defendant a second request for the production of documents requesting from defendant Krantz two categories of e-mails: first, all e-mails to the plaintiff on March 29, 2006; second, all e-mails to the plaintiff. The plaintiff requested from defendant School District "[a]ll e-mails between the Dallastown Area School District Supervisor; Dr. Stewart Weinberg, and the Plaintiff during defendant Weinberg's tenure as the District Superintendent." The plaintiff asserts that not all responsive

documents were provided. He asserts that a December 21, 2005 e-mail to him from defendant Krantz was not provided. The defendants state that they provided all e-mails that they could find, noting that defendant Krantz had not been employed by the District since December of 2006. The one e-mail cited by the plaintiff, bearing no inference of any purposeful failure to make discovery, does not give rise to an order compelling discovery or to sanctions.

On August 9, 2008, the plaintiff sent to defendants a Request to Photograph Offices at the Dallastown Middle School and Copies of E-Mails. The plaintiff asserts that no e-mails were provided. The defendants have submitted to the court a copy of the Objections and Responses that they provided to the plaintiff on September 3, 2008. (Doc. 108-2, pages 4-11). The defendants deem a second inspection of the school, apart from the main office and principal's office, not to be likely to lead to evidence. We agree. They have stated that they will provide copies of e-mails sent from defendant Krantz to the plaintiff on March 29, 2006. They object to providing all e-mails between Krantz and Weinberg from October 1, 2006 to

January 31, 2007, unless the request is refined. That is reasonable. The request is unduly burdensome.

The plaintiff also asserts that answers of defendant Krantz to two requests for admissions are not adequate. The answers are not inadequate. The defendant stated that after a reasonably inquiry he can not admit or deny the statement(s) proffered by the plaintiff. See Rule 36(a)(4) of the Federal Rules of Civil Procedure.

The plaintiff repeatedly cites the Pennsylvania Right to Know Law, 65 P.S. § 66.1, as the basis for his right to a court order compelling discovery. But this court's reference to authority in the context of civil case discovery is to the Federal Rules of Civil Procedure and the Pennsylvania Right to Know Law is immaterial here. Here, there is no doubt of the right of the plaintiff to discover matters that he can obtain under the state law if they are subject to discovery under the Federal Rules of Civil Procedure. The plaintiff's avenue of pursuit of his rights under the state Right to Know law does not lie in this court.

We have reviewed the plaintiff's discovery requests that are the subject of the Order of November 12, 2008 and the materials and explanations provided by the parties. We do not find there to be instances or matters in which a basis for an order compelling discovery is presented.

Accordingly, this Memorandum and the Order of November 18, 2008 (Doc. 102) shall constitute the resolution of the discovery matters referred to this magistrate judge.

/s/ J. Andrew Smyser

J. Andrew Smyser
Magistrate Judge

Dated: December 10, 2008.